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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,937	09/30/2003	Woo-Chan Jung	SEC.898D	1631
20987	7590	03/27/2006		
VOLENTINE FRANCO, & WHITT PLLC ONE FREEDOM SQUARE 11951 FREEDOM DRIVE SUITE 1260 RESTON, VA 20190			EXAMINER SOWARD, IDA M	
			ART UNIT 2822	PAPER NUMBER

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/673,937

Applicant(s)

JUNG ET AL.

Examiner

Ida M. Soward

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29,30 and 33-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29,30 and 33-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 02-08-2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This Office Action is in response to the Applicants' amendment filed January 4, 2006.

Specification

The objection to the title of the invention has been withdrawn due to the amendment filed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-30 and 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bollinger et al. (5,200,358) in view of Pfiester (5,024,959).

In regard to claim 29, Bollinger et al. teach gate electrode 9 formed at an upper portion of the substrate 5, a source and a drain (column 3, lines 12-14) formed at a lower portion of both sides of said gate electrode 9; and an etch stop layer 11 (columns 1 and 3, lines 47 and 1-2, respectively); an undoped insulating layer 15 interposed formed on the etch stop layer 11; and an insulating layer 21 continuously formed on the

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substrate 5, the etch stop layer 11, and the undoped insulating layer 15 and the gate electrode 9 (Figure 6, columns 2-4, lines 51-68, 1-54 and 1-11, respectively).

In regard to claim 29, 30 and 33, "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP § 2113.

In regard to claims 34 and 36-37, where patentability is said to be based upon particular chosen dimensions or upon another variable recited in a claim, burden is on Applicant to show that the chosen dimensions are critical. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

However, Bollinger et al. fail to teach an etch stop layer formed on the substrate.

Pfiester teaches an etch stop layer 26 formed on the substrate 12 (Figure 6, columns 2-3, lines 31-49 and 45-47, respectively).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the semiconductor device structure as taught by Bollinger et al. with the semiconductor device having an etch stop layer formed on the substrate as taught by Pfiester to minimize the number of lithography masking steps (column 1, lines 15-18).

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In regard to claim 35, Pfiester teaches the insulating 28 being borophosphosilicate glass layer (column 3, lines 5-22).

Response to Arguments

Applicant's arguments with respect to claims 29-30 and 33-37 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to semiconductor device structures:

Brigham et al. (5,714,413)

Chan et al. (US 6,297,110 B1)

Nagabushnam et al. (5,888,588).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ida M. Soward whose telephone number is 571-272-1845. The examiner can normally be reached on Monday - Thursday 6:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zandra V. Smith can be reached on 571-272-2429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IMS

March 18, 2006

John M. Sawant
AU 2822